

## RIGHT OF WAY FOR RESERVOIR AND CANAL PURPOSES.

FEBRUARY 27, 1895.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed.

Mr. CAMINETTI, from the Committee on the Public Lands, submitted the following

### REPORT:

[To accompany H. R. 8958.]

The Committee on the Public Lands, to whom was referred the bill (H. R. 8567) to amend the act approved March 3, 1891, granting the right of way upon the public lands for reservoir and canal purposes, have had the same under consideration and report a substitute for the same and recommend its passage.

The said bill was referred to the Department of the Interior for report, and the Secretary of the Interior and Commissioner of the General Land Office favorably recommend a substitute. The communications from the Department, with the substitute, are made a part of this report.

In California and elsewhere the small towns and cities located in the valleys can utilize electric light and power at minimum cost if allowed the right of way across the Government lands in the foothills of the mountains, as this bill permits.

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DEPARTMENT OF THE INTERIOR,  
*Washington, February 23, 1895.*

SIR: I transmit herewith copy of report of the Commissioner of the General Land Office on House bill No. 8567, "To amend an act approved March 3, 1891, granting the right of way upon public lands for reservoir and canal purposes."

I concur with the Commissioner in the opinion that the bill should not become a law, but I see no objection to the amendment suggested by the Commissioner to the act of January 21, 1895, providing that the right of way through forest reservations may be authorized under regulations to be adopted by the Secretary relative to the use of grounds for the purpose of generating, manufacturing, or distributing electric power.

Very respectfully,

HOKE SMITH, *Secretary.*

Hon. T. C. McRAE,  
*Chairman Committee on the Public Lands, House of Representatives.*

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DEPARTMENT OF THE INTERIOR, GENERAL LAND OFFICE,  
*Washington, February 13, 1895.*

SIR: I have the honor to acknowledge the receipt by reference from the Department of a bill (H. R. 8567) "To amend an act approved March 3, 1891, granting the right of way upon public lands for reservoir and canal purposes," referred to the Department by Hon. Thomas C. McRae, chairman of the House Committee on the Public Lands.

The bill provides that section 20 of the act of March 3, 1891 (26 Stat., 1095), be amended by adding: "And the right of way to the extent provided by section 18 of

said act, together with the use of land not exceeding 40 acres, for the location of necessary works and plant, is hereby granted to any corporation, individuals, or association of individuals, for the purpose of manufacturing or for the generation and distribution of electric power, subject to the limitations and conditions applicable hereto, as prescribed by sections 18, 19, 20, and 21 of the act to which this is an amendment."

The bill proposes to grant right of way for the location of necessary works and plant for the purpose of manufacturing or for the generation and distribution of electric power, subject to the limitations and conditions applicable hereto, as prescribed by sections 18 to 21 of the act of 1891.

The sections of the act of 1891 prescribing, among other conditions, that the right of way is limited to the area, not greater than the prescribed amount, used for the purposes of conducting and storing water for irrigating purposes. This limitation, while perhaps intended to apply to all the purposes contemplated by the bill, can scarcely be so construed, as for the purpose of generating and distributing power poles would be erected and wires strung, and the right of way, therefore, proposed to be granted by this bill would appear to be absolute to the extent of 100 feet in width. Similar right of way for necessary wagon roads, rail and tram roads for the purpose of manufacturing or for the generation and distribution of electric power may perhaps be successfully asserted under the wording of the bill if enacted, for the bill extends to these purposes the limitations and conditions of the act of 1891 applicable hereto. Limitations as to right of way for the storage and carriage of water may not be held applicable to right of way for the purpose of manufacturing or for the generation and distribution of electric power.

The bill also proposes to grant the use of land, not exceeding 40 acres, for the location of necessary works and plant for the purpose of manufacturing or for the generation and distribution of electric power. For the reasons before stated this may, by liberal construction, be held to be an absolute grant of the use of the land to the extent of the selection for the purposes stated. The extent of the land which may be selected for the necessary works and plant is too great for those uses unless construed so broadly as to include all sorts of commercial manufactures and purposes connected therewith, as the raising of appropriate crops and the like. The right of way for the canals of 50 feet on each side of the marginal limits of the water thereof would give a strip of land over 100 feet in width along the whole length of the canal for use for such purposes as may be admissible under the bill, which appears to be ample.

The act of Congress approved January 21, 1895, to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs to citizens or associations of citizens engaged in the business of mining or quarrying, or of cutting timber and manufacturing lumber, seems to me to indicate the appropriate policy if it is desired to enlarge the purposes for which the use of rights of way on the public lands may be allowed; and I would therefore recommend that the purposes to which it may seem desirable to extend the use of right of way on the public land may be incorporated in that act by amendment. It seems to me proper that this extension of the use of such easements should be under the full control of the Department as in that act, because of the policy expressed in the proviso in section 18 of the act of 1891 (*supra*) that "the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories," some of the States and Territories having by law given preference to domestic and agricultural uses of water over others, e. g., Colorado, Utah, Idaho, and South Dakota. The permission to use the public land for carrying water for miscellaneous purposes should accordingly be allowed in such manner as not to interfere with the control by local law.

It is my opinion that this bill should not become a law. I would recommend, however, legislation by way of amendment of the act of January 21, 1895, before mentioned, in effect as follows, viz:

"That the act entitled 'An act to permit the use of the right of way through the public lands for tramroads, canals, and reservoirs, and for other purposes,' approved January 21, 1895, be, and the same is hereby, amended by adding thereto the following:"

"SEC. 2. That the Secretary of the Interior be, and hereby is, authorized and empowered, under general regulations to be fixed by him, to permit the use of right of way to the extent of 25 feet, together with the use of necessary ground not exceeding 40 acres upon the public lands and forest reservations of the United States, by any citizen or association of citizens of the United States, for the purposes of generating, manufacturing, or distributing electric power."

Very respectfully,

S. W. LAMOREUX, *Commissioner.*

THE SECRETARY OF THE INTERIOR.